

These features are neither taught nor suggested by the prior art, as discussed below.

At the outset, Kitamura discloses a DNA encoding a protein having an amino acid sequence which is supposedly 99.4% identical to the amino acid sequence of SEQ ID NO. 2, but it does not disclose SEQ ID NO. 2. Also, the nucleotide sequence of Kitamura has the 90.9% identity to SEQ ID NO. 1 by the Best Local Similarity (Smith, T.R and Waterman, M.S. (1981) J. Mo. Biol. 147: 195-197).

Therefore, the above DNAs of claimed inventions, namely a DNA encoding the protein having the amino acid sequence of SEQ ID NO.2 and a DNA having the nucleotide sequence of SEQ. ID NO .1, are clearly different from Kitamura's DNA, and thus the DNAs of claims 2 and 3 are not anticipated by Kitamura.

Also not disclosed by Kitamura is the DNA of claim 4 which has 95 % or more homology with that nucleotide sequence.

Claims 2-7, 20 and 21 are rejected under 35 USC §102(b) as being anticipated by Baumgartener et al. (J. Mol. Biol. 251: 41-49 (1995)). The Examiner states that Baumgartener et al. teach a DNA encoding a protein which is 99.4% similar in amino acid sequence to the amino acid sequence of SEQ ID NO. 2 of the claimed invention. This rejection, too, is respectfully traversed.

Baumgartener discloses a DNA encoding a protein having an amino acid sequence which is 99.4% identical to the amino acid sequence of SEQ ID NO. 2, but not the DNA encoding SEQ ID NO .2. Also, a nucleotide sequence of the DNA disclosed by Baumgartener has only 90.3 % identity to the partial sequence of SEQ ID NO. 1 by the Best Local Similarity. Therefore, again, there is no *prima facie* case of anticipation.

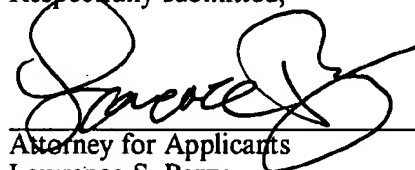
Nor is there any suggestion or motivation in the prior art to modify Kitamura's or Baumgartener's DNA. Accordingly, respectfully submitted, the Examiner has not made out a *prima facie* case of obviousness.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 2-7, 20 and 21 remain presented for continued prosecution with rejoinder of appropriate non-elected method claims being respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lawrence S. Perry', is written over a horizontal line.

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VERSION WITH MARKINGS TO SHOW CHANGES MADE TO CLAIMS

2. (Amended) A DNA encoding the protein [according to Claim 1] having the amino acid sequence represented by SEO ID NO. 2.

4. (Amended) A DNA capable of hybridizing to, the nucleotide sequence of the DNA according to Claim 2 or 3 under stringent conditions and having 95% or more homology with the nucleotide sequence of said DNA, and encoding a protein having apoptosis-suppressing activities.